

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 366 OF 1995**

Shrikrishna Sitaram Bandivadekar  
(since deceased, through the heirs  
and legal representatives)  
Smt.Sumati Shrikrishna Bandivadekar  
& ors. ... Appellants

v/s

1. Smt.Shakuntala Parshuram Warghade  
& ors. ... Respondents

Mr.P.N.Karlekar i/by Mr.R.R.Arolkar for the appellants.

None present for the respondents.

**CORAM: SMT.NISHITA MHATRE, J.**

**DATED: 9TH OCTOBER, 2009**

**ORAL JUDGMENT:**

1. The appeal has been filed by the heirs of the original claimant for enhancement of the amount awarded by the Motor Accident Claims Tribunal. The Tribunal has directed payment of an amount of Rs.25,000/- to the applicant along with interest at the rate of 12% p. a. from the date of the award till realization.

2. The accident occurred on 3.2.1983 when the original applicant was knocked down by an auto-rickshaw driven in the rash and negligent manner. The auto-rickshaw was owned by respondent No.1 and driven by respondent No.2. As a result of the accident, the applicant sustained a head injury causing contusion on the brain and loss of memory. Minor injuries were caused to the leg. The applicant claimed an amount of Rs.65,500/- as compensation from the respondents by filing Application No.246 of 1983 before the Motor Accident Claims Tribunal, Pune. The Tribunal has accepted that the injuries which the applicant sustained were due to the accident he met with on 3.2.1983. It has also been accepted that the motor vehicle involved in the accident was an auto-rickshaw owned and driven by respondent Nos.1 and 2 respectively. It was insured with respondent No.3. The Tribunal has held that there was no contributory negligence on the part of the applicant and therefore has directed payment of compensation. However, while considering the quantum payable to the applicant, the Tribunal has awarded Rs.4,424/- as medical expenses , Rs.5000/- towards pain and sufferings and Rs.15,000/- as general damages.

3. The main submission on behalf of the appellant is that the Tribunal has not awarded interest from the date of the

application as is the usual practice. The Tribunal in the present case has warded interest from the date of the award. Reliance is placed on the judgment of the Supreme Court in the case of **Jagbir Singh & ors. v/s General Manager, Punjab Roadways & ors., reported in A.I.R. 1987 SC 70.** The other submission made on behalf of the appellant is that the original applicant was 76 years' old when he met with the accident and had been disabled to the extent of 72 to 80% as testified by the doctor. It is submitted that in such a case, it would be but natural that the applicant would have to employ an attendant. Evidence was placed on record to indicate that an attendant has been employed and that the salary paid was about Rs.150/- per month which had been enhanced to Rs. 300/- per month. In such circumstances, submits the learned advocate for the appellant that, the Tribunal has erred in not awarding any amount towards the attendant's salary, both paid as well as for the future.

4. A perusal of the evidence on record indicates that the son of the applicant had been examined before the Tribunal. He deposed that an amount of Rs.150/- had been paid to the attendant who was attending to his ailing father. He has also deposed that the salary had been increased to Rs.300/- per

month and that upto the date on which he deposed in Court they had spent about Rs.15,000/- towards the attendant's salary.

5. Undisputedly, the applicant suffered a head injury due to which he was disabled to the extent of about 72 to 80%. The doctor who deposed before the Court has stated that he was suffering from senile dementia due to the head injury he sustained in the year 1983 due to the accident. In a case such as the present one, it would be normal for the family to employ an attendant to take care of the ailing father. There is evidence on record to indicate that the applicant and his family had paid Rs.150/- per month to the attendant. In such circumstances, in my opinion, the Tribunal has erred in not awarding any amount towards the attendant's salary. Admittedly, the accident occurred in the year 1983. The applicant was admitted to hospital after the accident and required treatment after hospitalization. In fact, the treatment was being continued even thereafter.

6. In such circumstances, I am of the view that the Tribunal has committed an error in not directing the payment of any amount towards the attendant's salary. The Tribunal has denied this amount since there was no documentary

evidence to prove that the salary had been paid. However, the statement made by the son of the applicant had not been controverted and, therefore, ought to have been accepted by the Tribunal. In these circumstances, the Tribunal ought to have awarded Rs.7500/- towards the salary paid for the attendant from the date of the accident till the award.

8. As regards the submission with respect to the interest payable, in my opinion, the grievance of the appellants is justified. The Tribunal ought to have directed the payment of interest from the date of the application, which is the normal practice. There is no reason stated in the award as to why it was necessary to depart from this usual practice and to award interest from the date of the award. In my opinion, therefore, the interest is payable at the rate of 12% per annum as awarded, from the date of the application till realization.

9. Respondent No.3 though served is not represented.

10. Accordingly, the appeal is partly allowed and the award is modified to the following extent :-

(i) The appellants shall be paid an amount of Rs.7500/-

by respondent No.3 towards the salary paid to the attendant.

- (ii) The amount of compensation shall be paid to the appellants together with the interest at the rate of 12% per annum from the date of the application till realization.
- (iii) All other stipulations in the award are upheld.

11. No order as to costs.

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